

§ 723.13

§ 723.13 Point system for penalties.

(a) The Office shall use the point system described in this section to determine the amount of the penalty and, in the case of notices of violation, whether a mandatory penalty should be assessed as provided in § 723.12(b).

(b) Points shall be assigned as follows:

(1) *History of previous violations.* The Office shall assign up to 30 points based on the history of previous violations. One point shall be assigned for each past violation contained in a notice of violations. Five points shall be assigned for each violation (but not a condition or practice) contained in a cessation order. The history of previous violations for the purpose of assigning points, shall be determined and the points assigned with respect to a particular surface coal mining operation. Points shall be assigned as follows:

(i) A violation shall not be counted if the notice or order is the subject of pending administrative or judicial review or if the time to request such review or to appeal any administrative or judicial decision has not expired, and thereafter it shall be counted for only one year.

(ii) No violation for which the notice or order has been vacated shall be counted; and

(iii) Each violation shall be counted without regard to whether it led to a civil penalty assessment.

(2) *Seriousness.* The Office shall assign up to 30 points based on the seriousness of the violation, as follows:

(i) *Probability of occurrence.* The Office shall assign up to 15 points based on the probability of the occurrence of the event which a violated standard is designed to prevent. Points shall be assessed according to the following schedule:

PROBABILITY OF OCCURRENCE

	Points
None	0
Insignificant	1-4
Unlikely	5-9
Likely	10-14
Occurred	15

(ii) *Extent of potential or actual damage.* The Office shall assign up to 15

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points, based on the extent of the potential or actual damage, in terms of area and impact on the public or environment, as follows:

(A) If the damage or impact which the violated standard is designed to prevent would remain within the permit area, the Office shall assign zero to seven points, depending on the duration and extent of the damage or impact.

(B) If the damage or impact which the violated standard is designed to prevent would extend outside the permit area, the Office shall assign eight to fifteen points, depending on the duration and extent of the damage or impact.

(iii) *Alternative.* In the case of a violation of an administrative requirement, such as a requirement to keep records, the Office shall, in lieu of paragraphs (i) and (ii), assign up to 15 points for seriousness, based upon the extent to which enforcement is obstructed by the violation.

(3) *Negligence.* (i) The Office shall assign up to 25 points based on the degree of fault of the person to whom the notice or order was issued in causing or failing to correct the violation, condition, or practice which led to the notice or order, either through act or omission. Points shall be assessed as follows:

(A) A violation which occurs through no negligence shall be assigned no penalty points for negligence;

(B) A violation which is caused by negligence shall be assigned 12 points or less, depending on the degree of negligence;

(C) A violation which occurs through a greater degree of fault than negligence shall be assigned 13 to 25 points, depending on the degree of fault.

(ii) In determining the degree of negligence involved in a violation and the number of points to be assigned, the following definitions apply:

(A) *No negligence* means an inadvertent violation which was unavoidable by the exercise of reasonable care.

(B) *Negligence* means the failure of a permittee to prevent the occurrence of any violation of his or her permit or any requirement of the Act or this chapter due to indifference, lack of

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diligence, or lack of reasonable care, or the failure to abate any violation of such permit or the Act due to indifference, lack of diligence, or lack of reasonable care.

(C) *A greater degree of fault than negligence* means reckless, knowing, or intentional conduct.

(iii) In calculating points to be assigned for negligence, the acts of all persons working on the surface coal mining and reclamation site shall be attributed to the person to whom the notice or order was issued, unless that person establishes that they were acts of deliberate sabotage.

(4) *Good faith in attempting to achieve compliance.* (i) The Office shall add points based on the degree of good faith of the person to whom the notice or order was issued in attempting to achieve rapid compliance after notification of the violation. Points shall be assigned as follows:

DEGREE OF GOOD FAITH

	Points
Rapid compliance	-1 to -10
Normal compliance	0

(ii) The following definitions shall apply under paragraph (b)(4)(i) of this section:

(A) *Rapid compliance* means that the person to whom the notice or order was issued took extraordinary measures to abate the violation in the shortest possible time and that abatement was achieved before the time set for abatement.

(B) *Normal compliance* means the person to whom the notice or order was issued abated the violation within the time given for abatement.

(iii) If the consideration of this criterion is impractical because of the length of the abatement period, the assessment may be made without considering this criterion and may be reassessed after the violation has been abated.

§ 723.14 Determination of amount of penalty.

The Office shall determine the amount of any civil penalty by converting the total number of points assigned under 30 CFR 723.13 to a dollar

amount, according to the following schedule:

	Points	Dollars
1	32	
2	64	
3	86	
4	108	
5	110	
6	132	
7	254	
8	276	
9	298	
10	320	
11	342	
12	364	
13	386	
14	508	
15	530	
16	552	
17	574	
18	596	
19	618	
20	640	
21	662	
22	684	
23	706	
24	728	
25	750	
26	860	
27	1,070	
28	1,080	
29	1,090	
30	1,100	
31	1,210	
32	1,320	
33	2,430	
34	2,540	
35	2,650	
36	2,760	
37	2,870	
38	2,980	
39	3,090	
40	3,200	
41	3,310	
42	3,420	
43	3,530	
44	3,640	
45	3,750	
46	3,860	
47	3,970	
48	5,080	
49	5,190	
50	5,300	
51	5,410	
52	5,520	
53	5,630	
54	5,740	
55	5,850	
56	5,960	
57	6,070	
58	6,180	
59	6,290	
60	6,400	
61	6,510	
62	6,620	
63	6,730	
64	6,840	
65	6,950	
66	7,060	
67	7,170	
68	7,280	
69	7,390	
70	7,500	